

United States
Circuit Court of Appeals
3
For the Ninth Circuit.

JAMES C. DAVIS, Director General of Rail-
roads, as Agent, Pursuant to Section 211,
Transportation Act, 1920,
Plaintiff in Error,
vs.
R. D. ADAMS,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

P. H. JOHNSON, Esq.,

Phelan Building, San Francisco, Calif.,

Attorney for Appellant.

Messrs. KEYES & ERSKINE,

Humboldt Bank Building, San Francisco, Calif.,

Attorneys for Appellee.

In the District Court of the United States in and
for the Southern Division of the Northern Dis-
trict of California, Second Division.

No. 16701.

JAMES C. DAVIS, Director-General of Railroads,
as Agent, Pursuant to Section 211, Trans-
portation Act, 1920,

Plaintiff,

vs.

R. D. ADAMS,

Defendant.

Complaint.

Now comes the plaintiff in the above and fore-
going entitled action, and complaining of the de-
fendant herein for cause of action alleges:

I.

That on the 28th day of February, 1920, the then
President of the United States, by proclamation,
pursuant to Section 211 of Transportation Act 1920,
duly designated and appointed Walter D. Hines,
the then Director-General of Railroads, or his suc-

cessor in office, either personally or through such divisions, agents, or persons as the latter might appoint, to exercise and perform all and singular the powers and duties conferred or imposed upon the President of the United States by the provision of said Transportation Act of 1920, except the designation of the agent under Section 206 of said Transportation Act, and the said then President of the United States did thereby confirm and continue in the said Walter D. Hines, Director-General of Railroads and his successor in office, all powers and authority heretofore conferred under the Federal Control Act, approved March 21, 1918, except as such powers and authority have been limited in the said Transportation Act, and the said Walter D. Hines, Director-General of Railroads or his successor in office was by the then President of the United States authorized and directed until otherwise provided by proclamation of the President or by Act of Congress to do and perform as fully in all respects as the President is authorized [1*] to do, all and singular the acts and things necessary or proper, in order to carry into effect the provisions of said proclamation, and the unrepealed provision of the said Federal Control Act.

II.

That James C. Davis, Director-General of Railroads, is the successor in office of W. D. Hines, Director-General of Railroads, and is now the duly appointed, qualified and acting agent of the President, pursuant to said proclamation and pursuant

*Page-number appearing at foot of page of original certified Transcript of Record.

to said Section 211 of the Transportation Act of 1920.

III.

That the defendant in the above-entitled action, R. D. Adams, is a resident of the city and county of San Francisco, State of California.

IV.

That during the year 1918 and subsequent to November second of said year, said defendant, R. D. Adams became indebted to the then Director-General of Railroads in the sum of Two Thousand Six Hundred Sixty-two and 23/100 (2,362.23) Dollars—including war tax—on account of work and labor performed and services rendered at the instance and request of said defendant, R. D. Adams, in transporting shipment of chrome ore by railroad from Clovis in the county of Fresno, State of California, to Coatesville in the county of Chester, State of Pennsylvania; that said sum has not been paid, nor has any part thereof been paid, except the sum of Seven Hundred and Sixty-five (765) Dollars; that there is now due, owing, and unpaid from said defendant, R. D. Adams, to said plaintiff the sum of One Thousand Five Hundred Ninety-seven and 23/100 (1,597.23) Dollars; that said plaintiff has demanded payment of said defendant R. D. Adams, but said defendant, R. D. Adams has refused and still refuses to pay the same or any part thereof.

And as and for a second, separate and distinct cause of action against said defendant, said plaintiff complains and alleges as follows: [2]

I.

Plaintiff hereby refers to and repeats the allegations of paragraphs I, II, and III, of the first cause of action herein, and by such reference and repetition hereby make said paragraphs I, II, and III, and each of them a part of this second cause of action, with the same force and effect as if the same were at length repeated herein.

II.

That on or about the 2d day of November, 1918, said defendant, R. D. Adams, delivered or caused to be delivered at Clovis in the county of Fresno, State of California, to the then Director-General of Railroads, a shipment of chrome ore, to be transported by railroad from said Clovis in the county of Fresno, State of California, to Coatesville in the county of Chester, State of Pennsylvania; that said shipment of chrome ore was consigned to the order of defendant, R. D. Adams, c/o E. C. Humphreys Company, notify Midvale Steel and Ordinance Company at Coatesville, Pennsylvania; that said shipment of chrome ore was so transported from said Clovis in the county of Fresno, State of California, to said Coatesville by the then Director-General of Railroads, that, pursuant to said bill of lading, the said Midvale Steel and Ordinance Company at Coatesville, Pennsylvania, was at once notified of the arrival of said shipment of chrome ore, and thereupon said Midvale Steel and Ordinance Company refused to accept said shipment of chrome ore; that immediately upon said refusal by said Midvale Steel & Ordinance Company to ac-

cept said shipment of chrome ore, the then Director-General of Railroads notified E. C. Humphrey's Company that said shipment of chrome ore had arrived at Coatesville, but said E. C. Humphrey's Company likewise refused to accept said shipment; that thereafter and in accordance with law said shipment of chrome ore was sold by the Director-General of Railroads, and the proceeds of the sale applied against the accrued charges for such transportation leaving a balance of One Thousand Five Hundred [3] Ninety-seven and $23/100$ (1597.23) Dollars; that the legal charge for such transportation including war tax—was and is the sum of Two Thousand Three Hundred Sixty-two and $23/100$ Dollars has been paid, except the sum of Seven Hundred and Sixty-five (765) Dollars, and there is now due, owing and unpaid from said defendant, R. D. Adams, to said plaintiff the sum of One Thousand Five Hundred and Ninety-seven Dollars and $23/100$ ths (1,597.23).

III.

That said plaintiff has demanded of said defendant, R. D. Adams said sum of One Thousand Five Hundred Ninety-seven and $23/100$ ths Dollars, and said defendant refused and still refuses to pay the same or any part thereof, and the same is now due, owing and unpaid from said defendant to said plaintiff.

WHEREFORE, plaintiff prays judgment against said defendant, R. D. Adams, in the sum of One Thousand Five Hundred Ninety-seven and $23/100$ ths Dollars with interest thereon, at the

rate of seven (7) per cent per annum, from the second day of November, 1918, until paid, and for costs of suit.

Dated, March sixth, 1922.

P. H. JOHNSON,
Attorney for Plaintiff. [4]

State of California,
City and County of
San Francisco,—ss.

P. H. Johnson, being duly sworn, on behalf of the plaintiff in the above-entitled case, says that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on his information or behalf, and as to those matters, that he believes it to be true; that the said plaintiff is absent from the State of California, where his attorney resides, and that the affiant is plaintiff's attorney, and therefore makes this affidavit for, and on behalf of the said plaintiff.

P. H. JOHNSON.

Subscribed and sworn to before me this 10th day of March, 1922.

[Seal] LESTER BALL,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Mar. 10, 1922. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[5]

(Title of Court and Cause.)

Demurrer.

Now comes the defendant in the above-entitled action and demurs to the complaint on file herein and for grounds of demurrer alleges:

I.

Said complaint does not state facts sufficient to constitute a cause of action.

II.

That the first count of said complaint does not state facts sufficient to constitute a cause of action against the defendant R. D. Adams.

III.

That the first count of said complaint is barred by the terms and provisions of Subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California.

IV.

That the second count of said complaint does not state facts sufficient to constitute a cause of action.

V.

That the second count of said complaint is barred by the terms and provisions of Subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California.

VI.

That said complaint is uncertain in this that it does not appear whether or not a bill of lading for said alleged shipment was issued to said Adams

or to E. C. Humphreys Company or to the Midvale Steel Company, and it does not appear therefrom whether or not there was any bill of lading or agreement in writing entered into by and between said R. D. Adams and said plaintiff for the shipment of said goods and if so what the terms and provisions of said agreement were. [6]

VII.

That said complaint is uncertain in this that it does not appear therefrom how long the chrome ore which was shipped was held by the railroad after refusal of the Midvale Steel Company and E. C. Humphreys Company to accept said shipment, whether or not it was held in the car in which it was shipped or was stored and if so by whose order and at whose request it was stored and it does not appear therefrom how much of said accrued charges for transportation are for demurrage and how much are for storage.

VIII.

That said complaint is unintelligible in the same particulars in which it is claimed to be uncertain in Paragraphs VI and VII hereof.

IX.

That said complaint is ambiguous in the same particulars in which it is claimed to be uncertain in Paragraphs VI and VII hereof.

X.

That the said plaintiff has no legal capacity to sue the said defendant.

XI.

That the Court has no jurisdiction of the person of the defendant or the subject of the action.

WHEREFORE, defendant prays that plaintiff take nothing by his said complaint on file herein, but that this defendant be hence dismissed with his costs of suit expended herein.

KEYES and ERSKINE,
Attorneys for Defendant.

Receipt of a copy of the within demurrer is hereby admitted this 19th day of April, 1922.

P. H. JOHNSON,
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 20, 1922. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[7]

At a stated term, to wit, the March Term, A. D. 1922, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday the 8th day of May, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,701.

JAMES C. DAVIS, as Agent, etc.

vs.

R. D. ADAMS.

**Minutes of Court—May 8, 1922—Order Overruling
Demurrer.**

Defendant's demurrer to complaint coming on to be heard and after arguments being submitted, it is ordered that said demurrer be and is hereby overruled. [8]

(Title of Court and Cause.)

Answer.

Now comes the defendant, R. D. Adams, and answering plaintiff's complaint on file in the above-entitled action, admits, denies and alleges as follows:

I.

Answering the first count of said complaint this defendant denies that during the year 1918 or at any other time or at all and subsequent to November 2d, 1918, or at any other time or at all the said defendant became indebted to the then Director-General of Railroads in the sum of \$2,662.23 or in the sum of \$2,362.23 or in any sum whatsoever or at all including war tax or excluding war tax on account of work and labor performed or on account of work or labor performed and services rendered or on account of work or labor performed or services rendered at the instance and request of the defendant R. D. Adams or at the instance or request of the defendant R. D. Adams or for or on account of any work or labor or services whatsoever or on account of work or labor or services in transporting a ship-

ment of chrome ore by railroad from Clovis in the county of Fresno, State of California, to Coatesville in the county of Chester, State of Pennsylvania, or for transporting chrome ore or any other product from any place in the State of California or elsewhere to the State of Pennsylvania.

For a further and separate defense to the said first count of said complaint this defendant alleges that the said claim and the said first count of said complaint is barred by the terms and provisions of subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California.

Answering the second count of said complaint this defendant denies that he delivered or caused to be delivered at Clovis in the county of Fresno, State of California, to the Director-General of [9] Railroads on or about the 2d day of November, 1918, a shipment of chrome ore to be transported by railroad from said Clovis in the county of Fresno, State of California, to Coatesville, in the county of Chester, State of Pennsylvania, but on the contrary allege that on September 17th, 1918, said defendant entered into a contract in writing with E. C. Humphreys Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, by which said defendant agreed to sell and deliver to said E. C. Humphreys Company, 1,046 tons of low grade and 608 tons of high grade chrome ore; that a copy of said agreement marked Exhibit "A" is hereto attached, hereby referred to and made a part hereof for all purposes, and that in pursuance of said agreement

and on the 2d day of November, 1918, the said R. D. Adams delivered to the said Director-General of Railroads a quantity of chrome ore amounting to a carload; that said chrome ore was placed by the railroad in Car Erie 51611; that thereupon an order bill of lading was issued by the railroad; that by the terms of said order bill of lading the said ore was consigned to the order of defendant, R. D. Adams, care of E. C. Humphreys Company, Coatesville, Pennsylvania; that it was provided on the said bill of lading that the Midvale Steel & Ordinance Company at Coatesville should be notified; that at the time of the issuance of said bill of lading to the said R. D. Adams the said R. D. Adams did not reside at Coatesville and did not expect delivery of the said chrome ore at Coatesville, Pennsylvania; that the value of said chrome ore at said time of shipment was the sum of \$2,852.13; that after the issuance of said bill of lading the said defendant endorsed the same and delivered it to the said E. C. Humphreys Company who thereupon became the owner and consignee of the said shipment of chrome ore; that the said shipment of chrome ore was destined for and intended for the Midvale Steel & Ordinance Company; that this defendant is informed and believes and therefore alleges that the said E. C. [10] Humphreys Company agreed to sell the said car of ore to said Midvale Steel & Ordinance Company; that the said car of chrome ore arrived at Coatesville, Pennsylvania, and the said Midvale Steel & Ordinance Company was notified of the arrival thereof; that the said Midvale Steel & Ordinance

nance Company refused to accept the said shipment of chrome ore; that thereupon the said E. C. Humphreys Company directed, and requested the Director-General of Railroads to unload the said ore and to store the said chrome ore until it, the said E. C. Humphreys Company could resell it to some other person; that thereupon the said E. C. Humphreys Company for three or four months attempted to resell the said chrome ore to some other person, firm or corporation; that the said Director-General of Railroads in compliance with the said request and demand of the said E. C. Humphreys Company unloaded the said ore and stored the same; that the said defendant did not agree with the said Director-General or anyone else to pay the said freight upon the said ore; that on the contrary the said E. C. Humphreys Company agreed to pay said freight on the said ore; that after the ore had remained in storage as requested by the said E. C. Humphreys Company the said Director-General of Railroads sold the said ore and received from the sale thereof the sum of \$765.00; that the following are the charges that were made by the said Director-General of Railroads for the freight, storage and unloading of the said ore and for demurrage thereon, to wit:

Freight	\$ 873.37
Demurrage, Pennsylvania railroad	90.00
Demurrage “ “	70.00
Storage	1,290.00
Unloading	7.63

Total\$2,331.00

That all of said sums were incurred at the special instance and request of the said E. C. Humphreys Company; that the said sum of \$1,290.00 is not the reasonable value for the storage of said ore; that the reasonable value for the storage of said ore could not exceed the sum of \$100.00; that the said ore remained [11] stored at the request of the said E. C. Humphreys Company for three or four months after the arrival thereof at Coatesville, Pa.; that defendant is informed and believes and therefore avers that the said ore was not stored in any warehouse, that it was simply dumped at or near the railroad tracks at Coatesville, Pa., in the open air. Defendant denies that the said E. C. Humphreys Company likewise refused to accept said shipment but on the contrary alleges that the said E. C. Humphreys Company accepted the said shipment and agreed to pay the freight therefor and ordered the ore stored as hereinabove set forth. Denies that the legal charge for the transportation including war tax for said ore is and was the sum of \$2,662.23 or is or was the sum of \$2,362.23 or is any sum in excess of the sum of \$2,662.23. Denies that there is now due, owing and unpaid or that there is now due, owing or unpaid from the said defendant R. D. Adams to the said plaintiff the sum of \$1,597.23 or any sum whatsoever.

For a further and separate defense to the said second count of said complaint this defendant alleges that the said claim and the said second count of said complaint is barred by the terms and provi-

sions of Subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California.

WHEREFORE, this defendant prays that plaintiff take nothing by his complaint on file herein and that this defendant have judgment herein for his costs of suit.

KEYES & ERSKINE,
Attorneys for Defendant.

State of California,
City and County of San Francisco,—ss.

R. D. Adams, being duly sworn, deposes and says:

That he is the defendant named in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as [12] to those matters which are therein stated on information and belief and as to those matters he believes it to be true.

R. D. ADAMS.

Subscribed and sworn to before me this 20th day of May, 1922.

[Seal] NETTIE HAMILTON,
Notary Public in and for the City and County of
San Francisco, State of California. [13]

Exhibit "A."

Detroit, Michigan, September 17, 1918.

Mr. R. D. Adams,

Humboldt Bank Bldg.,

San Francisco, Cal.

Dear Sir:

In accordance with arrangement made with your Mr. W. E. Balcom, it is hereby understood that you are to furnish us the following tonnages and grades of Chrome Ore for shipment as specified, in lieu of tonnages still due us on Purchase Orders Nos. 1307, 1326 and 1363 respectively.

We are to have a total of 1046 tons of low grade Chrome Ore guaranteed 30 to 35% Chromic Oxide
10% and under Silica

all for shipment over the balance of this year at a price of 60¢ per unit per net ton for 30% Ore; 64¢ per unit per net ton for 34% Ore with 2¢ per unit advance over 34% basis. It is understood that we will allow you to ship a few cars as low but not lower than 28% Chromic Oxide at the same price subject to 2¢ per unit decline for each unit under 30%, providing we can get the sanction of our customers. It is understood that you are not to ship any Ore less than 30% unless you hear from us to that effect.

Shipment of the above-mentioned low grade tonnage is to start at once. The first 469 tons is to be shipped to the Colorado Fuel & Iron Company, Minnequa, Colorado. As soon as you have com-

pleted shipment of this quota, we will give you additional shipping specifications.

It is understood that we are to have a total of 608 tons of high grade Ore—that, is, Ore Guaranteed 40 to 45% Chromic Oxide with Silica 8% and under. The price for this Ore is to be \$1.10 per unit for Ore 40% and over Chromic Oxide. This Ore to be shipped to E. J. Lavino & Company, Philadelphia, Pennsylvania. [14]

Shipment of not less than 250 tons of this high grade Ore to be made during the next sixty days and it is understood that if it is possible, you will ship the entire 608 tons this year, but this Agreements gives you the right to delay shipment of all over and above 250 tons until 1919 Spring season.

Terms of payment to be sight draft with bill-lading and analysis certificate attached thru our Detroit Bank, the National Bank of Commerce. These drafts to be subject to a discount of $\frac{1}{2}$ of 1% for prompt payment.

E. C. HUMPHREYS COMPANY,

Per E. C. Humphreys,

Prest.

Accepted.

R. D. ADAMS.

By W. E. Balcom.

Receipt of a copy of the within answer is hereby admitted this — day of May, 1922.

P. H. JOHNSON,

Attorney for Plaintiff.

[Endorsed]: Filed May 23, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

(Title of Court and Cause.)

Motion to Strike Parts from Answer.

Comes now the plaintiff in the above and foregoing entitled action and here moves this honorable Court for an order striking from the answer of defendant on file herein all those certain portions thereof, to wit:

a. On line 21 of page 2 thereof commencing with the word "said" all of the succeeding allegations to and including the word "agreement" on line 28 of page 2 thereof.

b. On line 8 of page 3 thereof commencing with the word "that" all of the succeeding allegations to and including the word "company" on line 21 of page 3 thereof.

c. On line 25 of page 3 thereof commencing with the word "that" all of the succeeding allegations to and including the word "same" on line 4 of page 4 thereof.

d. On line 6 of page 4 thereof commencing with the word "that" all of the succeeding allegations to and including the word "company" on line 9 thereof.

e. On line 19 of page 4 thereof commencing with the word "that" all of the succeeding allegations to and including the word "company" on line 20 of page 4 thereof.

f. On line 22 of page 4 thereof commencing with the word "that" all of the succeeding allegations to and including the word "Pa." on line 26 of page 4 thereof.

g. On line 1 of page 5 thereof commencing with the word "that" all of the succeeding allegations to and including the word "forth" on line 3 of page 4 thereof.

h. All of Exhibit "A" beginning with the words Exhibit "A" on line 1 after page 6 of said complaint down to and including the word "Balcom" on line 18 of page 2 following page 6 of said complaint, and each clause, each phrase and each word set forth [16] in the foregoing specifications and each thereof upon the ground that all the matters hereinbefore set forth and specified as set forth in said answer are, and each clause, phrase and word thereof is, incompetent, irrelevant, immaterial, redundant, evidentiary, argumentative and are conclusions of law and unnecessary matter to be in said answer.

This motion is made and based upon all the papers, pleadings, records and files on file in the above-entitled action and upon that certain notice of motion, dated May 26, 1922, and served and filed in the above and foregoing entitled action on the 27th day of May, 1922.

P. H. JOHNSON,
Attorney for Plaintiff.

JAMES G. GOWEN,
Solicitor, Pennsylvania System.
Of Counsel for Plaintiff.

Due and personal service of the within document is admitted this 27th day of May, 1922.

KEYES & ERSKINE,
Attorneys for Defendant.

[Endorsed]: Filed May 27, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

At a stated term, to wit, the March term, A. D. 1922, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday, the 19th day of June, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable FRANK S. DIETRICH, District Judge for the District of Idaho, designated to hold and holding this Court.

(Title of Cause.)

Minutes of Court—June 19, 1922—Order Denying Motion to Strike Out Parts from Answer.

Plaintiff's motion to strike out parts from answer came on to be heard and after arguments being submitted and fully considered, it is ordered that said motion be and the same is hereby denied. [18]

(Title of Court and Cause.)

Proposed Stipulation of Facts.

It is hereby stipulated by and between the parties to the above and foregoing entitled action as follows, to wit:

I.

At the trial of the above-entitled action every

fact included in the following statement will be deemed to be correct but the admission of every fact so stated into evidence shall be subject to all legal objections as to its relevancy, competency and materiality, and it is hereby understood and agreed that this stipulation is entered into with the express reservation that the statements therein contained shall be subject to all legal objections to their relevancy, competency and materiality

II.

That on November 2, 1918, the defendant herein, by a diversion order, intercepted, while still on the line of the initial carrier, Southern Pacific Company, at Tucson, Arizona, 101,700 pounds of chrome ore loaded on Erie car No. 51611, originally shipped from Clovis, California, by the I. D. Payne Company, consigned to its order notify R. D. Adams, the destination of which shipment was Glen Ferris, West Virginia, and diverted the same to Coatesville, Pennsylvania; that thereupon an order bill of lading covering the shipment by railroad of said ore so loaded in Erie car No. 51611 from initial point of shipment, to wit, Clovis, California to Coatesville, Pennsylvania, was issued by the Southern Pacific Company to said defendant in which the defendant herein is both consignor and order consignee and the Midvale Steel & Ordinance Company the "notify" party; that said defendant executed the appropriate shipping order covering the movement by railroad of said ore so loaded in Erie car No. 51611 as aforesaid from Clovis, California, to Coatesville, Pennsylvania, [19] consigned to the defendant,

with instructions to notify Midvale Steel & Ordinance Company; that a copy of said bill of lading marked Exhibit "A" is hereto attached, hereby referred to and made a part hereof for all purposes;

III.

That upon the arrival of said Erie car No. 51611 at destination, to wit, Coatsville, Pennsylvania, the said car loaded with said chrome ore was placed by the plaintiff upon the premises of the Midvale Steel & Ordinance Company for unloading on December 5, 1918; that on or about December 9, 1918, the said Midvale Steel & Ordinance Company refused to accept delivery of the said shipment of chrome ore.

IV.

That on the 2d day of January, 1918, the United States Railroad Administration wrote to the defendant the following letter:

"United States Railroad Administration Philadelphia.

January 2, 1918.

When replying refer to File No. G-30 Desk 1.
Refusal of chrome ore at Coatesville, a/c Midvale Steel Co.

"Mr. R. D. Adams,

"Humboldt Bank Bldg.,

"San Francisco, Cal.

"Dear Sir:

"On December 9, the Midvale Steel & Ordinance Company, Coatesville, Pa., refused to accept delivery of Erie Car #51611, chrome ore, shipped

from the Pacific Coast, purchased by them from E. C. Humphreys Company, Chicago, Ill.

“I accordingly communicated with E. C. Humphreys Company, requesting that they furnish disposal orders for the [20] car in order that further delay to same might be avoided. They advise me, however, that you were the shipper of same, and that they approached you for disposition.

“I trust you appreciate that delays to equipment of this kind are very serious, and must be prevented as far as possible, and I will thank you to advise by return mail what disposition can be made of this shipment.

“Yours very truly,

“R. R. BLYDENBURGH,
B.”

That in answer to said above-mentioned letter the defendant wrote to the United States Railroad Administration as follows:

“January 8, 1919.

“United States Railroad Administration,

“Broad Street Station,

“Philadelphia, Pa.

“Gentlemen:

“Replying to your letter File No. G-30, Desk 1, in reference to Car Erie 51611, chrome ore shipped by us to the E. C. Humphreys Company, beg to advise that they have purchased this car from us and we have delivered the bill of lading to them. This was an order bill of lading shipment and we cannot at present take up the matter of disposition of the car without the bill of lading.

“For your information will state that we have no place we can dispose of this car outside of the destination it is at present and would suggest that you take the matter up with the E. C. Humphreys Company.

“Yours very truly,

“ADAMS & MALTBY,

“By C. S. Maltby.” [21]

V.

That at the time of the shipment of said Erie Car No. 51611 there existed between the defendant and the E. C. Humphreys Company a contract in writing a copy of which marked Exhibit “B” is hereto attached, hereby referred to and made a part hereof for all purposes; that the shipment by said defendant of Erie Car No. 51611 was made in pursuance of said contract with E. C. Humphreys Company, and the said Erie Car No. 51611 was routed by defendant and sent “c/o E. C. Humphreys Company,” as per order bill of lading, Exhibit “A.”

VI.

That at the time the said contract of transportation was entered into between the plaintiff and defendant herein as evidenced by said order bill of lading hereto attached and marked Exhibit “A,” the plaintiff herein had no knowledge or information of any kind whatever of the contract and arrangement set out in Paragraph V hereinabove, hereto attached and marked Exhibit “B.”

VII.

That at or about the same time the defendant

shipped two other cars known as the Pa. 294001 and Pa. 825285 under said contract with the E. C. Humphreys Company to the Midvale Steel & Ordinance Company, and an order bill of lading was issued for each of said last two mentioned cars; that by the terms of said order bill of lading the said chrome ore contained in each of said cars last named was consigned to the defendant R. D. Adams, c/o E. C. Humphreys Company, Coatesville, Pennsylvania, which was the same method used in respect to Erie Car No. 51611; that it was provided by all of said bills of lading that said Midvale Steel & Ordinance Company at Coatesville, Pennsylvania, should be notified; that at the time when each of these said cars reached the Midvale Steel & Ordinance Company at Coatesville, Pennsylvania, [22] it refused to accept delivery thereof; that after receipt of the letter of January 8, 1919, from Adams & Maltby to the United States Railroad Administration, the said Administration took the matter up with E. C. Humphreys Company therein referred to; that on the 13th day of January, 1919, one Reinhart representing the E. C. Humphreys Company, went to the United States Railroad Administration and asked it to unload and store the chrome ore in Erie Car No. 51611, Pa. car 825285 and Pa. car 294001; that thereupon and at the request of E. C. Humphreys Company the said railroad unloaded the said chrome ore on the ground and on a platform on its right of way at Coatesville, Pennsylvania; that thereafter the E. C. Humphreys Company sold the

two Pennsylvania cars; that at the request of the said E. C. Humphreys Company the two Pennsylvania cars were reloaded by the railroad and in March, 1919, were shipped to the parties designated by the E. C. Humphreys Company; that said E. C. Humphreys Company continued its efforts to sell, at a price satisfactory to said E. C. Humphreys Company, the chrome ore in Erie Car No. 51611 after the disposal of the chrome ore in the two Pennsylvania cars and requested the said railroad to keep said ore in storage pending these efforts.

VIII.

That the said railroad kept the said chrome ore in storage as aforesaid until the 16th day of June, 1919, when in accordance with law and pursuant to the orders of the Railroad Administration the railroad sold the said ore for charges, and received therefor the gross sum of \$765.00.

IX.

That at the time of the shipment of the said chrome ore in Erie Car No. 51611, the Southern Pacific Company issued to the said defendant, R. D. Adams, the said order bill of lading; that the said defendant attached this order bill of lading to a draft [23] on the E. C. Humphreys Company and sent the bill of lading and the draft to the First National Bank of Commerce at Detroit; that the amount of said draft was \$2,325.13; that prior to the arrival of said Erie Car No. 51611 at Coatesville, Pennsylvania, the said E. C. Humphreys Company paid the said draft and received the bill of lading, and on the arrival of said car at

Coatesville, Pennsylvania, directed the disposition thereof.

X.

That the said plaintiff herein had no knowledge or information of any kind whatever of any arrangement between the defendant, R. D. Adams, and the E. C. Humphreys Company, or of the issuance and payment of the draft mentioned and set out in Paragraph IX hereof.

XI.

That the plaintiff herein sold the said shipment of chrome ore, pursuant to law and the orders of the Railroad Administration, after proper and legal notice to the defendant consignor and consignee for the best price it could obtain under all the circumstances, and, therefore, realized the greatest sum available for said chrome ore under all the existing circumstances in connection with said shipment.

XII.

That the charges on this shipment of chrome ore up to the time of placement at the Midvale Plant at Coatesville, Pennsylvania, were as follows:

Demurrage at point of origin	\$12.00		
Diversión at Tucson, Arizona	2.00		
Freight charges at rate of 84.5 cents per 100 pounds, Clovis, Cal., to Coatesville, Pa.	859.37		
	<hr/>		
	873.37	War tax	\$26.20
Against these charges we credit net proceeds of sale, \$758.66, applied	736.38	" "	22.28
	<hr/>		
Leaving unpaid balance of	136.99	" "	3.92

Additional charges accrued are:

	at Coatesville	130.00	War tax	3.90
PRR	“ “ “	110.00	“ “	3.30
PRR unloading	“ “	7.63	“ “	.23
PRR storage	“ “	1290.00	“ “	
Total to be collected,		<hr/>		<hr/>
\$1,685.97.		\$1674.62	“ “	\$11.35

XIII.

That under the provisions of the published storage Tariff Schedules, shipments unloaded by the carrier to release equipment were charged storage at same rates as would have accrued under demurrage rules had the goods remained in the car; that the reasonable rate to be charged, and the only rate which could have been charged for the storage of said chrome ore, was the rate fixed by the provisions of the published Tariff, to wit, \$10.00 per day, exclusive of Sundays and holidays.

XIV.

That all of the charges mentioned herein, to wit, freight diversion, demurrage, storage and unloading are assessed and computed under appropriate Tariff schedules published and filed by the plaintiff with the Interstate Commerce Commission as provided by law, and that they are in all respects legal and proper.

XV.

That R. D. Adams has not paid any of said charges, including freight, diversion demurrage, storage and unloading of said shipment of chrome ore.

XVI.

That at the time the said bill of lading herein referred to was issued to the said defendant, he did not reside at Coatesville, Pennsylvania; that said defendant did not accept delivery of said chrome ore at Coatesville, Pennsylvania.

XVII.

That the said bill of lading so as aforesaid issued by the Southern Pacific Company to R. D. Adams, defendant consignor and consignee, shows upon its face that said shipment of chrome ore [25] to Coatesville, Pennsylvania, was made at the request of the defendant, R. D. Adams; that the "notify" party, Midvale Steel & Ordinance Company, refused to accept the said shipment of chrome ore upon its arrival at Coatesville, Pennsylvania.

Dated: December 13th, 1922.

P. H. JOHNSON,

Attorney for Plaintiff.

KEYES and ERSKINE,

Attorneys for Defendant.

JAMES E. GOWEN,

Of Counsel for Plaintiff.

[Endorsed]: Filed Feb. 28, 1923. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[26]

(Title of Court and Cause.)

Amended Complaint.

Now comes the plaintiff in the above and forego-

ing entitled action and by leave of Court first had and obtained files this his amended complaint, and complaining of the defendant herein for cause of action alleges:

I.

That on the 28th day of February, 1920, the then President of the United States, by proclamation, pursuant to Section 211 of Transportation Act 1920, duly designated and appointed Walter D. Hines, the then Director-General of Railroads, or his successor in office, either personally or through such divisions, agents or other persons as the latter might appoint, to exercise and perform all and singular the powers and duties conferred or imposed upon the President of the United States by the provision of said Transportation Act of 1920, except the designation of the agent under Section 206 of said Transportation Act, and the said then President of the United States did thereby confirm and continue in the said Walter D. Hines, Director-General of Railroads and his successor in office, all powers and authority heretofore conferred under the Federal Control Act, approved March 21, 1918, except as such powers and authority have been limited in the said Transportation Act, and the said Walter D. Hines, Director-General of Railroads or his successor in office was by the then President of the United States authorized and directed until otherwise provided by proclamation of the President or by Act of Congress to do and perform as fully in all respects as the President is authorized to do, all and singu-

lar the acts and things necessary or proper, in order to carry into effect the provisions of said proclamation, and the unrepealed provisions of the said Federal Control Act. [27]

II.

That James C. Davis, Director-General of Railroads, is the successor in office of W. D. Hines, Director-General of Railroads, and is now the duly appointed, qualified and acting agent of the President, pursuant to said proclamation and pursuant to said Section 211 of the Transportation Act of 1920.

III.

That the defendant in the above-entitled action, R. D. Adams, is a resident of the city and county of San Francisco, State of California.

IV.

That during the year 1918 and subsequent to November 2d of said year, said defendant, R. D. Adams became indebted to the then Director-General of Railroads in the sum of Two Thousand Four Hundred Forty-four and 63/100 (\$2,444.63) Dollars—including war tax, on account of work and labor performed and services rendered at the instance and request of said defendant, R. D. Adams, in transporting shipment of chrome ore by railroad from Clovis in the county of Fresno, State of California, to Coatesville in the county of Chester, State of Pennsylvania; that said sum has not been paid, nor has not been paid, nor has any part thereof been paid; except the sum of Seven Hundred Fifty-eight and 66/100 (758.66)

Dollars; that there is now due, owing and unpaid from said defendant, R. D. Adams, to said plaintiff the sum of One Thousand Six Hundred Eighty-five and 97/100 (1,685.97) Dollars; that said plaintiff has demanded payment of said defendant, R. D. Adams, but said defendant, R. D. Adams has refused and still refuses to pay the same or any part thereof.

As and for a second, separate and distinct cause of action against said defendant, said plaintiff complains and alleges as follows:

I.

Plaintiff hereby refers to and repeats the allegations of [28] paragraphs I, II, and III of the first cause of action herein and by such reference and repetition hereby made said paragraphs I, II and III, and each of them, a part of this second cause of action, with the same force and effect as if the same were at length repeated herein.

II.

That on or about the 2d day of November, 1918, said defendant, R. D. Adams, delivered or caused to be delivered at Clovis, in the county of Fresno, State of California, to the then Director-General of Railroads, a shipment of chrome ore, to be transported by railroad from said Clovis, in the county of Fresno, State of California, to Coatesville, in the county of Chester, State of Pennsylvania; that said shipment of chrome ore was consigned to the order of defendant, R. D. Adams, c/o E. C. Humphrey's Company, notify Midvale Steel and Ordinance Company at Coatesville, Pennsylvania; that

said shipment of chrome ore was so transported from said Clovis in the county of Fresno, State of California, to said Coatesville by the then Director-General of Railroads; that, pursuant to said bill of lading, the said Midvale Steel and Ordinance Company at Coatesville, Pennsylvania, was at once notified of the arrival of the said shipment of chrome ore, and thereupon said Midvale Steel and Ordinance Company refused to accept said shipment of chrome ore; that immediately upon said refusal by said Midvale Steel and Ordinance Company to accept said shipment of chrome ore, the then Director-General of Railroads notified E. C. Humphrey's Company that said shipment of chrome ore had arrived at Coatesville, but said E. C. Humphrey's Company likewise refused to accept said shipment; that thereafter and in accordance with law said shipment of chrome ore was sold by the Director-General of Railroads, and the proceeds of the sale applied against the accrued charges for such transportation leaving a balance of One Thousand Six Hundred Eighty-five and $97/100$ (1,685.97) Dollars; that the legal charge for such transportation, including war tax, was and is the sum of [29] Two Thousand Four Hundred Forty-four and $63/100$ (2,444.63) Dollars; that no part of said sum of Two Thousand Four Hundred Forty-four and $63/100$ (2,444.63) Dollars has been paid, except the sum of Seven Hundred Fifty-eight and $66/100$ (758.66) Dollars, and there is now due, owing and unpaid from said defendant, R. D. Adams, to said plaintiff the sum

of One Thousand Six Hundred Eighty-five and 97/100 (1,685.97) Dollars.

III.

That said plaintiff has demanded of said defendant, R. D. Adams, said sum of One Thousand Six Hundred Eighty-five and 97/100 (1,685.97) Dollars and said defendant refused and still refuses to pay the same or any part thereof, and the same is now due, owing and unpaid from said defendant to said plaintiff.

WHEREFORE, plaintiff prays judgment against said defendant, R. D. Adams, in the sum of One Thousand Six Hundred Eighty-five and 97/100 (1,685.97) Dollars with interest thereon, at the rate of seven per cent per annum, from the second day of November, 1918, until paid, and for costs of suit.

Dated: March 13th, 1923.

P. H. JOHNSON,
Attorney for Plaintiff.

State of California,
City and County of San Francisco,—ss.

P. H. Johnson, being duly sworn, on behalf of the plaintiff, in the above-entitled case, says that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters that are therein stated on information or belief, and as to those matters, that he believes it to be true.

That the said plaintiff is absent from the State of California, where his attorney resides, and that

the affiant is plaintiff's attorney and, therefore, makes this affidavit on [30] behalf of the said plaintiff.

P. H. JOHNSON.

Subscribed and sworn to before me this 13th day of March, A. D. 1923.

[Seal]

EDWIN G. BATH,

Notary Public in and for the City and County of San Francisco, State of California.

Due service and receipt of copy of the within document is hereby admitted, this 13th day of March, 1923.

KEYES and ERSKINE,

Attorneys for Defendant.

[Endorsed]: Filed Mch. 14, 1923. Walter B. Maling, Clerk. [31]

(Title of Court and Cause.)

Supplemental Stipulation of Facts.

It is hereby stipulated by and between the parties to the above-entitled action as follows, to wit:

I.

That Paragraph XIII on page 7 of the stipulation of facts filed in this case may be amended so that said paragraph will read as follows:

“That under the provisions of the published storage Tariff Schedules, shipments unloaded by the carrier to release equipment were charged storage at same rates as would have accrued under demurrage rules had the goods remained in the

car; that the reasonable rate to be charged, and the only rate which could have been charged for the storage of said chrome ore, was the rate fixed by the provisions of the published Tariff, to wit: Charges applicable after free time, forty-eight hours, has expired, for each of the first four days \$3.00, for each of the next three days \$6.00 and for each succeeding day \$10.00."

II.

The Federal Order No. 34 A effective at the time of the arrival of this freight read, with reference to unperishable freight, in part as follows:

"Carriers subject to Federal control shall sell at public auction to the highest bidder without advertisement carload and less than carload non-perishable freight which has been refused or is unclaimed at its destination by consignee *after the same has been on hand sixty days*. Consignee, as described in the waybilling, shall be notified of arrival of shipment in all cases and such notice shall contain a provision that if freight is unclaimed or undelivered for fifteen days after expiration of free time at destination it will be treated as refused and may be sold without further notice sixty [32] days *from date of arrival*."

III.

The Pennsylvania statute applicable to the sale of freight which has not been taken by the owner or consignee and which statute was in effect at the time is known as "No. 965, An Act Relating to the liens of common carriers, and others." A copy

of said Act marked Exhibit "C" is hereto attached and made a part hereof for all purposes.

IV.

It is further stipulated that R. D. Adams, defendant herein, did not give any direct personal notice to the plaintiff or to the Pennsylvania Railroad to store the shipment in Car Erie 51611, and it is further stipulated that said R. D. Adams at all the times herein mentioned, steadfastly refused to give or make any disposition order of said car Erie 51611 to plaintiff or to the Pennsylvania Railroad.

V.

It is further stipulated that the admission of every fact herein stated shall be subject to all legal objections as to its relevancy, competency and materiality.

Dated: March 16, 1923.

P. H. JOHNSON,

Attorney for Plaintiff.

KEYES and ERSKINE,

Attorneys for Defendant. [33]

Exhibit "C."

No. 965.

AN ACT.

Relating to the liens of common carriers, and others.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth

of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same. That in all cases, in which commission merchants, factors, and all common carriers, or other persons, shall have a lien, under existing laws, upon any goods, wares, merchandise, or other property, for, or on account of, the costs, or expenses, of carriage, storage, or labor bestowed on such goods, wares, merchandise, or other property, if the owner, or the consignee of the same, shall fail, or neglect, or refuse to pay the amount of charges upon any such property, goods, wares, or merchandise, within sixty days after demand thereof, made personally, upon such owner, or consignee, then, and in such case, it shall and may be lawful for any such commission merchant, factor, common carrier, or other person, having such lien, as aforesaid, after the expiration of said period of sixty days, to expose such goods, wares, merchandise, or other property, to sale, at public auction, and to sell the same, or so much thereof, as shall be sufficient to discharge said lien, together with costs of sale and advertising: PROVIDED, That notice of such sale, together with the name of the person, or persons, to whom such goods shall have been consigned, shall have been first published for three consecutive weeks, in a newspaper, published in the county, and by six written, or printed handbills, put up in the most public and conspicuous places in the vicinity of the depot where the said goods may be.

Section 2. That upon the application of any of the persons, or corporations, having a lien upon goods, wares, merchandise, or other property, as mentioned in the first section of this act, verified by affidavit, to any of the judges of the courts of common pleas of this commonwealth, setting forth that the places of residence of the [34] owner and consignee of any such goods, wares, merchandise, or other property, are unknown, or that such goods, wares, merchandise, or other property, are of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice as provided for in the first section of this act, then, and in such case, it shall and may be lawful for a judge of the city, or county, in which the goods may be, to make an order, to be by him signed, authorizing the sale of such goods, wares, merchandise, or other property, upon such terms, as to notice, as the nature of the case may admit of, and to such judge shall seem meet: PROVIDED, That in cases of perishable property, the affidavit and proceedings, required by this section, may be had before a justice of the peace.

Section 3. That the residue of moneys, arising from any such sale, either under the first or second sections of this act, after deducting the amount of the lien, as aforesaid, together with costs of advertising and sales, shall be held subject to the order of the owner, or owners, of such property.

Section 4. That an act of the general assembly, entitled "An Act in reference to liens of common

carriers, and others," approved the sixteenth day of March, Anno Domini one thousand eight hundred and fifty-eight, be and the same is hereby repealed.

JOHN CESSNA,

Speaker of the House of Representatives.

GEORGE V. LAWRENCE,

Speaker of the Senate.

Approved: The fourteenth day of December, Anno Domini one thousand eight hundred and sixty-three.

A. G. CURTIS.

[Endorsed]: Filed Mar. 17, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[35]

(Title of Court and Cause.)

(Decision on the Merits.)

Upon the agreed statement of facts the Court concludes that plaintiff is entitled to recover of and from the defendant the charges set out in said statement to and including Jan. 8, 1919. It is assumed the parties can segregate the proper items for entry in the judgment, rendered accordingly. Who ships goods as principal contracts to pay freight whether or not owner or consignee, in absence of agreement to the contrary.

Demurrage and storage after carriage completed is implied rather than express and arises only incidentally, viz., by the consignee's default promptly to receive delivery of the goods, the carrier's duty

to preserve them for reasonable time, and the latter's right to be compensated for this latter service. The obligation for this compensation ordinarily falls upon the delinquent consignee whose fault occasioned the service and whose is the benefit. In this case wherein defendant was both consignor and consignee, he is at least liable for the demurrage and storage until he parted with ownership and control of the ore and bill of lading by sale and transfer of both the Humphreys and gave notice thereof to plaintiff.

Thereafter, as both further default in receipt of delivery and further benefit of storage were not defendants' but were Humphreys' to plaintiff's knowledge and in which he acquiesced (accepted the situation and submitted to Humphreys' control and direction) not defendant but Humphreys is obligated to compensate plaintiff; and from the latter alone can plaintiff recover. The rule is that of any ordinary bailment of storage other than following carriage, in like circumstances.

If the bailor sells and notifies the bailee, any further service by the latter is in reliance upon the implied duty of the [36] vendee to pay for it. If plaintiff was not content, he could have refused further storage despite order 34a.

March 20, 1923.

BOURQUIN,
J.

[Endorsed]: Filed Mch. 20, 1923. Walter B. Maling, Clerk. [37]

At a stated term, to wit, the March Term, 1923, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Tuesday the 20th day of March in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable GEORGE M. BOURQUIN, District Judge for the District of Montana, designated to hold and holding this court.

(Title of Cause.)

Minutes of Court—March 20, 1923—Order for Judgment.

This cause heretofore submitted being now fully considered and the Court having filed its decision, it is ordered that judgment be entered in favor of plaintiff in the sum of \$518.31 and for costs. [38]

(Title of Court and Cause.)

Judgment.

This cause having come on regularly for trial upon the 13th day of March, 1923, being a day in the March, 1923, term of said court, before the Court sitting without a jury, a trial by jury having been specially waived by stipulation filed; P. H. Johnson, Esq., appearing as attorney for plaintiff and Messrs. Keyes and Erskine, appear-

ing as attorneys for defendant and the cause having been submitted to the Court on an agreed statement of facts and the briefs of the attorneys, and the Court after due deliberation having rendered its oral opinion and ordered that judgment be entered in favor of the plaintiff and against defendant in the sum of \$518.31 and for costs.

Now therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff do have and recover of and from defendant the sum of Five Hundred Eighteen and 31/100 (\$518.31) Dollars, together with his costs herein expended taxed at \$14.00.

Judgment entered March 20, 1923.

WALTER B. MALING,

Clerk. [39]

(Title of Court and Cause.)

Petition for Writ of Error.

The above-named plaintiff, James C. Davis, Director-General of Railroads, as agent, pursuant to Section 211, Transportation Act, 1920, feeling himself aggrieved by the decision of the above-entitled Court rendered in said cause, and the judgment entered thereon, on the 20th day of March, 1923, comes now, by P. H. Johnson, his attorney, and James E. Gowen, of counsel for plaintiff, to petition said Court for an order allowing him to prosecute a writ of error to the United States Circuit Court of Appeals in and for the Ninth Circuit under and according to the laws of the United

States in that behalf made and provided, for the reasons specified in his assignment of errors filed herewith.

The judgment, above referred to and which this plaintiff desires to have reviewed by writ of error as aforesaid, adjudged that this plaintiff is entitled to recover of and from the defendant the charges for storage set out in the agreed statement of facts filed in said cause, to and including January 8, 1919, to wit, the sum of \$518.31 and his costs and disbursements incurred in said cause amounting to the sum of \$14.00; and denied the prayer of plaintiff's complaint for the item of storage, to wit, \$758.66, accruing subsequent to January 8, 1919, and that plaintiff must look to a third party for the latter amount.

WHEREFORE, plaintiff prays that this Honorable Court make and enter an order allowing such writ of error and fixing the amount of security to be required of plaintiff to perfect these proceedings in error, and further prays that a transcript of the record, proceedings and papers upon which said decision and judgment was made and entered, as aforesaid, duly authenticated, may be sent to said Circuit Court of Appeals in and for the Ninth Circuit, [40] sitting at San Francisco, California.

Dated: April 4th, 1923.

P. H. JOHNSON,
Attorney for Plaintiff.

JAMES E. GOWEN,
Of Counsel for Plaintiff.

[Endorsed]: Filed Apr. 12, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [41]

(Title of Court and Cause.)

Assignment of Errors.

Comes now the plaintiff in the above and foregoing entitled and numbered action, and files the following assignment of errors upon which he will rely on his prosecution of the writ of error in the above-entitled cause.

I.

That the said United States District Court in and for the Northern District of California, erred in denying the motion of the plaintiff and plaintiff in error to strike out portions of the original answer filed by the defendant in said cause of action.

II.

That the said United States District Court in and for the Northern District of California, erred in rendering its decision in favor of defendant and defendant in error and against the plaintiff and plaintiff in error for charges for storage subsequent to January 8, 1919, as set out in the agreed statement of facts filed in said action.

III.

That the said United States District Court in and for the Northern District of California, erred in rendering its decision in favor of defendant and defendant in error and against the plaintiff and plaintiff in error for charges for storage subse-

quent to January 8, 1919, as set out in the agreed statement of facts filed in said action, and in entering judgment in accordance therewith.

IV.

That the said United States District Court in and for the Northern District of California, erred in rendering its decision and entering its judgment thereon in favor of defendant and [42] defendant in error and against plaintiff and plaintiff in error for charges for storage subsequent to January 8, 1919, as set out in the agreed statement of facts filed in said action in this: That said decision is against law.

V.

That the said United States District Court in and for the Northern District of California, erred in rendering its decision and entering its judgment thereon in favor of defendant and defendant in error and against plaintiff and plaintiff in error for charges for storage subsequent to January 8, 1919, as set out in the agreed statement of facts filed in said action, in this: That said decision and said judgment is against law.

VI.

That the said United States District Court in and for the Northern District of California, erred in holding that plaintiff had knowledge of the sale and passing of title to Humphreys Company at the time of the transactions out of which the plaintiff's claim arose.

VII.

That the said United States District Court in and

for the Northern District of California, erred in holding that Humphreys took any orders from Adams, except as agent for Adams.

VIII.

That the said United States District Court in and for the Northern District of California, erred in holding that Humphreys Company, and not defendant, was obligated to plaintiff for the storage of said chrome ore after January 8, 1919.

IX.

That the said United States District Court in and for the Northern District of California, erred in holding that defendant, Adams, was entitled to and should receive the proceeds of the sale of said chrome ore, when Humphreys Company was the owner at the time of sale. [43]

X.

That the said United States District Court, in and for the Northern District of California, erred in assuming that plaintiff was dealing with Humphreys Company otherwise than as the agent for defendant, Adams.

XI.

That the said United States District Court, in and for the Northern District of California, erred in holding that the plaintiff and plaintiff in error had notice of the sale of the said chrome ore to Humphreys Company at the time of the transactions out of which the plaintiff's claim arose.

XII.

That the said United States District Court, in and for the Northern District of California, erred

in holding that the liability of the shipper for the lawful charges accruing in this case arose out of considerations of ownership and not out of the request for the service.

XIII.

That the said United States District Court, in and for the Northern District of California, erred in considering the question of ownership of the said chrome ore, raised by the defendant and defendant in error, in making its decision in said action; and that upon the evidence and record herein, the said Courts should have rendered its decision in favor of the plaintiff and plaintiff in error in accordance with the prayer of the complaint in said action, and against the defendant and defendant in error.

WHEREFORE, the said plaintiff and plaintiff in error prays that the judgment of the District Court of the United States, in and for the Northern District of California, Second Division, be reversed and that said cause may be remanded to said United States District Court in and for the Northern District of California, Second Division, with instructions to said Court to enter judgment, in accordance with the prayer of said [44] complaint, for the plaintiff and plaintiff in error.

Dated April 9th, 1923.

P. H. JOHNSON,
Attorney for Plaintiff.

JAMES E. GOWEN,
Of Counsel for Plaintiff.

[Endorsed]: Filed Apr. 12, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[45]

(Title of Court and Cause.)

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

On motion of P. H. Johnson, attorney, and James E. Gowen, of counsel for plaintiff and plaintiff in error, and upon the filing of a petition for a writ of error and an assignment of errors:

IT IS ORDERED that the writ of error as prayed for in said petition be allowed and that the amount of the bond for costs to be given by said plaintiff and plaintiff in error upon said writ of error be, and the same is hereby, fixed at the sum of Two Hundred and Fifty Dollars (\$250) and that on the giving of said bond, conditioned according to law, all further proceedings in this Court shall be suspended pending the determination of said writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit, sitting at San Francisco, California.

Dated: April 12, 1923.

BOURQUIN,
District Judge.

[Endorsed]: Filed Apr. 12, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[46]

(Title of Court and Cause.)

Bond on Writ of Error for Costs.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Aetna Casualty & Surety Co., of Hartford, Connecticut, is held and firmly bound unto the above-named R. D. Adams in the sum of Two Hundred and Fifty Dollars (\$250) to be paid to the said R. D. Adams, for the payment of which well and truly to be made, it binds itself, its executors, administrators and assigns firmly by these presents.

Sealed with its seal and dated the 29th day of April in the year of our Lord One Thousand Nine Hundred and Twenty-three.

WHEREAS, the above-named, James C. Davis, Director-General of Railroads, as agent, pursuant to Section 211, Transportation Act, 1920, has sued out a writ of error to the Circuit Court of Appeals of the United States, for the Ninth Circuit to reverse the judgment rendered in the above-entitled suit by the Judge of the District Court of the United States for the Northern District of California, Second Division:

NOW, THEREFORE, the condition of this obligation is such that if the said above-named, James C. Davis, shall prosecute said writ of error to effect and answer all costs if he fail to make his plea good,

then the above obligation to be void; otherwise the same shall be and remain in full force and virtue.

AETNA CASUALTY & SURETY CO.

By S. M. Hayward,
Resident Vice-president.

Attest: [Seal] P. M. CHRISTENSON,
Resident Asst. Secretary.

Form of bond and sufficiency of surety approved.

BOURQUIN,
Judge.

The premium charged for this bond is \$10.00
Dollars per annum.

[Endorsed]: Filed Apr. 12, 1923. Walter B.
Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[47]

(Title of Court and Cause.)

Praeipie for Transcript of Record.

To Walter B. Maling, Clerk of the United States
District Court, Northern District of California:

Please prepare and duly certify, for the proceedings in error of plaintiff, James C. Davis, Director-General of Railroads, as agent, Pursuant to Section 211, Transportation Act, 1920, to the United States Circuit Court of Appeals for the Ninth Circuit, against the judgment in the above-entitled and numbered suit in favor of the defendant and against said plaintiff, made and entered on the 20th day of March, 1923, a transcript incorporating the following portions of the record herein:

RECORD ON APPEAL.

1. Original complaint filed by plaintiff in said cause.
2. Demurrer to complaint filed by defendant herein.
3. Order overruling defendant's demurrer to plaintiff's complaint.
4. Answer of defendant filed herein.
5. Motion filed by plaintiff to strike parts from original answer of defendant.
6. Order denying motion to strike parts from answer.
7. Proposed stipulation of facts filed herein.
8. Amended complaint filed by plaintiff, pursuant to stipulation.
9. Supplemental stipulation of facts.
10. Written opinion of Court.
11. Order for judgment.
12. Judgment entered thereon. [48]
13. Petition for allowance of writ of error.
14. Order of allowance of writ of error.
15. Assignment of errors.
16. Writ of error.
17. Citation on writ of error.
18. Bond for costs on proceedings in error.
19. This praecipe.

Dated: April 6th, 1923.

P. H. JOHNSON,
Attorney for Plaintiff.

JAMES E. GOWEN,
Of Counsel for Plaintiff.

[Endorsed]: Filed Apr. 12, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [49]

(Title of Court and Cause.)

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing forty-nine (49) pages, numbered from 1 to 49, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the Clerk of said Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$20.95; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 9th day of May, A. D. 1923.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [50]

In the District Court of the United States, in and for the Southern Division of the Northern District of California, Second Division.

No. 16701.

JAMES C. DAVIS, Director-General of Railroads,
as Agent, Pursuant to Section 211, Transportation Act, 1920,

Plaintiff,

vs.

R. D. ADAMS,

Defendant.

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between James C. Davis, Director-General of Railroads, as agent, pursuant to Section 211, Transportation Act, 1920, plaintiff in error, and R. D. Adams, defendant in error, a manifest error hath happened, to the great damage of the said James C. Davis, Director-General of Railroads, as agent, pursuant to Section 211, Transportation Act, 1920, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy jus-

tice done to the parties aforesaid in this behalf, do command you, if judgment be therein [51] given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 12th day of April, in the year of our Lord one Thousand, Nine Hundred and Twenty-three.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

Allowed by BOURQUIN,
United States District Judge.

Admission of Service.

Service of the foregoing writ of error and receipt of a copy thereof, at the city and county of San Francisco in the Northern District of California, is hereby admitted this 20th day of April, 1923.

KEYES & ERSKINE,
Attorneys for Defendant in Error. [52]

[Endorsed]: No. 16701. In the District Court of the United States in and for the Southern Division of the Northern District of California, Second Division. James C. Davis, etc. Plaintiff, vs. R. D. Adams, Defendant. Writ of Error. Filed Apr. 20, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk United States District Court for the Northern District of California. [53]

In the District Court of the United States in and
for the Southern Division of the Northern Dis-
trict of California, Second Division.

No. 16701.

JAMES C. DAVIS, Director-General of Railroads,
as Agent, Pursuant to Section 211, Trans-
portation Act, 1920,

Plaintiff,

vs.

R. D. ADAMS,

Defendant.

Citation on Writ of Error (Original).

United States of America,—ss.

The President of the United States, to R. D.
Adams, GREETING:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden at the city of
San Francisco, in the State of California, within
thirty days from the date hereof, pursuant to a
writ of error duly issued and now on file in the
Clerk's office of the United States District Court
for the Northern District of California, Second
Division, wherein, James C. Davis, Director-Gen-
eral of Railroads, as agent, pursuant to Section
211, Transportation Act, 1920, is plaintiff in error,
and you are defendant in error, to show cause, if
any there be why the judgment rendered against
the said plaintiff in error, as in the said writ of

error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. [54]

WITNESS, the Honorable GEORGE M. BOURQUIN, United States District Judge for the Northern District of California, this 10th day of April, A. D. 1923.

BOURQUIN,
United States District Judge.

Admission of Service.

Service of the foregoing citation on Writ of error, and receipt of a copy thereof, at the city and county of San Francisco, in the Northern District of California, is hereby admitted, this 17th day of April, 1923.

KEYES & ERSKINE,
Attorneys for Defendant in Error. [55]

[Endorsed]: No. 16701. In the District Court of the United States in and for the Southern Division of the Northern District of California, Second Division. James C. Davis, etc., Plaintiff, vs. R. D. Adams, Defendant. Citation on Writ of Error. Filed Apr. 20, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 4028. United States Circuit Court of Appeals for the Ninth Circuit. James C. Davis, Director-General of Railroads, as Agent, Pursuant to Section 211, Transportation Act, 1920, Plaintiff in Error, vs. R. D. Adams, Defendant in

Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed May 9, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

